IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.645 OF 2002

Mansing Subrao Patil (Chavan) & Ors. ...Appellants
V/s.
Smt.Anusaya Mumtaji Gaikwad & Ors. ...Respondents

Mr.T.S. Ingale, Advocate, for the Appellants. .
Mr.Tushar Pimpale i/b. Mr.Amit Sale, Advocate, for Respondent Nos.1 to 4.

CORAM: B.H. MARLAPALLE, J.

Date : March 28, 2007.

P.C.:

. Heard Mr.Ingale, learned counsel for the appellant who has impleaded as defendant in Regular Civil Suit No.140 of 1991. The said suit was filed jointly by four plaintiffs for the relief of perpetual injunction restraining the defendants from interfering and obstructing the peacefull possession of the plaintiffs over the said land namely agricultural land admeasuring 2H 13R in Survey No.17/1 and 2H 63R in Survey No.18/1 of village Daphalapur in Jat Taluka of Sangli District. The said suit was dismissed by the learned Civil Judge, Junior Division, Jat on 11.01.2000 and therefore the Plaintiffs filed Regular

Civil Appeal No.32 of 2000. The said Appeal came to be allowed by the learned Additional District Judge, Sangli vide judgement / order dated 29.04.2002. The Trial Court held that the plaintiffs had failed to prove that they were in possession of the suit land and that the defendants were obstructing the suit possession. Consequently the prayer for injunction was rejected. However in Appeal the lower Appellate Court did not agree with the findings recorded by the Trial Court.

2. There is no dispute that the suit land was owned by the two sons of Krishna Chavan i.e. Subarao and Sarjerao, the predecessors of the defendant and it is said that Pandurang Bala Gaikwad was the tenant right from the year 1955. Pandurang had five sons namely Mumtaji, Shripati, Ganpati, Maruti and Baburao. Pandurang Gaikwad died on 05.04.1969. He was predeceased by two of his sons Mumtaji and Shripati. His third son Baburao died on 17.05.1979. The widows of four sons i.e. Mumtaji, Ganpati, Maruti and Baburao had filed the suit against the defendants and the widow of fifth son of the tenant i.e. Gojabai

impleaded as Defendant No.5.

3. Defendant Nos.1 to 4 in their written statements strongly denied the possession of Pandurang Gaikwad as the tenant and claimed that right from 1970 their names were appearing not only in the ownership column but also in the cultivation column and therefore their possession was uninterrupted right from 1970-71. The Trial Court accepted this proposition and held that for about 20 years continuously the Defendant Nos.1 to 4 being in possession of the suit land, the plaintiffs could not seek an injunction. The defendants had examined two witnessess in support of their defence i.e. Damaji D. Mane, DW-1 and the son of Defendant No.5 Namdeo S. Gaikwad, DW-2.

4. The lower Appellate Court examined the documentary and oral evidence on record and noted that right from the year 1954-55 to 1969-70 Pandurang Gaikwad was in possession of the suit property. In the 7/12 Extract of Revision Survey No.18/1 (Exhibit 9), his name was shown as tenant since 1954-55 to

1957-58 and in the 7/12 Extract of Revision Survey No.87/1 (Exhibit 87), his name was shown as tenant for the year 1958-59 to 1969-70. Plaintiff No.1 PW-1 Anusuya Gaikwad had stepped in the witness box and stated that till the demise of Pandurang Gaikwad, her father-in-law, with the help of his surviving sons was cultivating suit land and thereafter his surviving sons and the widows of other sons comprise a joint family and they were cultivating the said land. They approached the Court because in the year 1991, Defendant Nos.1 to 4 did not allow the cattles to enter in the suit property and the possession of the plaintiff for the suit property was obstructed by the respondents. The first witness of the defendant Damaji did not state that Subarao and Sarjerao were cultivating the land. On the contrary, Defendant Nos.1 to 4 did not challenge the fact that till the year 1969-70 the name of Pandurang was entered in the other rights column in respect of the said land. The evidence also proved that in the year 1970-71 they had applied to the Tehsildar for restoration of the land and this application remained pending. Thus, there was no proof brought on record by the defendants as to

how they had come in possession of the suit land in the year 1970-71. Under these circumstances, the lower Appellate Court drew presumtions on the basis of the provisions of Section 167 of the Maharashtra Land Revenue Act, 1966 and Section 114(d) of the Evidence Act and held that the plaintiffs possession in the suit land was continued. These findings were recorded by the lower Appellate Court based on the documentary evidence placed before the Trial Court and they cannot be termed as perverse or illegal. Hence, there is no substantial question of law that arises in this Second Appeal.

5. The counsel for the appellants then submitted that the proceedings pending at the instance of the appellants under the Bombay Tenancy and Agricultural Lands Act, 1948 are still pending and they were not included because of the pendancy of the suit as well as the Appeal. It is stated by the plaintiffs that there is no reason that these proceedings should be kept pending any more and will have to be decided on their own merits including the issue whether the provisions of the said Act are applicable to the suit

lands.

6. Hence the Second Appeal is dismissed and it is directed that the proceedings pending under the Bombay Tenancy and Agricultural Lands Act instituted by the Appellants shall be decided on their own merits as expeditiously as possible and preferably within a period of six months from the date on which a copy of this order is brought on record by the present appellants before the concerned Tribunal.

7. The ad-interim relief granted by this Court be continued for a further period of eight weeks.

(B.H. Marlapalle,J.)